

**OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
POSTAL RATE COMMISSION**

POSTAL RATE COMMISSION

In the Matter of:)
)
 RATE AND SERVICE CHANGES TO)
 IMPLEMENT BASELINE NEGOTIATED) Docket No. MC2005-3
 SERVICE AGREEMENT WITH)
 BOOKSPAN)

Room 300
 Postal Rate Commission
 1333 H Street, N.W.
 Washington, D.C.

Volume 1
 Thursday, August 11, 2005

The above-entitled matter came on for hearing
 pursuant to notice, at 10:00 a.m.

BEFORE:

HON. GEORGE A. OMAS, CHAIRMAN
 HON. TONY A. HAMMOND, VICE CHAIRMAN
 HON. DAWN TISDALE, COMMISSIONER

APPEARANCES:

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN OMAS: Good morning. Today, we are holding a prehearing conference in Docket Number MC2005-3, concerning Proposed Negotiated Service Agreement Between the Postal Service and Bookspan.

This case involves a request to implement a baseline negotiated service agreement. This is the first new baseline agreement filed since the Capital One Negotiated Service Agreement, and the first baseline agreement filed under the Commission's new rules on baseline negotiated service agreements.

I am George Omas, Chairman of the Postal Rate Commission. With me this morning is Vice Chairman Tony Hammond, and Commissioner Dawn Tisdale.

The Postal Service and Bookspan proposes that they be authorized to establish unique rate and fee provisions based solely upon declining block rate volume discounts available to qualifying standard mail letter pieces.

Under this agreement, Bookspan will be eligible for declining block rate volume discounts for standard mail letter volume that exceeds specific volume thresholds.

The discounts are payable only after certain

1 specific minimum volume levels above the volume
2 threshold have been reached. The agreement also
3 limits the number of letters eligible for volume
4 discounts in any one year.

5 Bookspan indicates that the expected
6 additional volume should have a multiplier effect;
7 that is, it should lead to additional volume of other
8 belated mail in several classes.

9 The Postal Service identifies this
10 multiplier effect as a prerequisite of this baseline
11 negotiated service agreement.

12 The reporter in this case is Heritage
13 Reporting Company. There are forms for noting
14 appearances available at the table as you enter the
15 hearing room. If you wish to purchase transcripts,
16 you should see the reporter after today's conference,
17 or call (202) 628-4888.

18 At this point, I would like to ask counsel
19 to identify themselves for the record. The United
20 States Postal Service.

21 MR. REITER: Good morning, Mr. Chairman. I
22 am Scott Reiter, representing the Postal Service.

23 CHAIRMAN OMAS: Thank you. Bookspan.

24 MR. VOLNER: Good morning, Mr. Chairman, Ian
25 Volner and Matthew Field representing Bookspan.

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1 CHAIRMAN OMAS: Thank you. Advo.

2 (No Response.)

3 CHAIRMAN OMAS: Alliance of Nonprofit
4 Mailers.

5 MR. LEVY: Good morning, Mr. Chairman.
6 David Levy for the Alliance, and I will also be
7 appearing for JP Morgan Chase, along with my partner,
8 Joy M. Leong.

9 CHAIRMAN OMAS: Thank you, Mr. Levy.
10 American Business Media.

11 (No response.)

12 CHAIRMAN OMAS: American Postal Workers
13 Union, AFL-CIO.

14 MR. ANDERSON: Good morning, Mr. Chairman,
15 and Commissioners, Darryl Anderson for the American
16 Postal Workers Union.

17 CHAIRMAN OMAS: Thank you. Association for
18 Postal Commerce.

19 MR. VOLNER: Ian Volner and Matthew Field
20 for the Association for Postal Commerce.

21 CHAIRMAN OMAS: Direct Marketing
22 Association, Incorporated.

23 MR. ACKERLY: Good morning, Mr. Chairman.
24 Todd Ackerly representing DMA.

25 CHAIRMAN OMAS: Thank you. Discover

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1 Financial Services, Incorporated.

2 MR. BRINKMANN: Good morning, Mr. Chairman,
3 and Commissioners, Robert Brinkmann representing
4 Discover Financial Services.

5 CHAIRMAN OMAS: Good morning, Mr. Brinkmann.
6 J.P. Morgan Chase and Company. Mr. Levy identified
7 himself as counsel, along with Ms. Leong. Magazine
8 Publishers of America, Incorporated.

9 MR. MYERS: Good morning, Mr. Chairman, and
10 Commissioners, Pierce Myers on behalf of MPA.

11 CHAIRMAN OMAS: National Newspaper
12 Association.

13 (No response.)

14 CHAIRMAN OMAS: Newspaper Association of
15 America.

16 MR. BAKER: Good morning, Mr. Chairman,
17 William Baker appearing on behalf of NAA. Thank you.

18 CHAIRMAN OMAS: Office of the Consumer
19 Advocate.

20 MR. COSTICH: Thank you, Mr. Chairman.
21 Emmett Rand Costich on behalf of the OCA; and with me
22 is Shelley Dreifuss, Director of the Office.

23 CHAIRMAN OMAS: Thank you. David Popkin.

24 (No response.)

25 CHAIRMAN OMAS: Time Warner, Incorporated.

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1 (No response.)

2 CHAIRMAN OMAS: Valpak Dealers' Association,
3 Incorporated; and Valpak Directing Marketing Systems,
4 Incorporated.

5 MR. OLSON: William J. Olson appearing on
6 behalf of both of those entities, Mr. Chairman.

7 CHAIRMAN OMAS: Thank you. Is there anyone
8 that I have missed?

9 (No response.)

10 CHAIRMAN OMAS: The Association for Postal
11 Commerce, Magazine Publishers of America,
12 Incorporated; and National Newspaper Association,
13 filed motions for acceptance of late intervention.
14 These motions are granted.

15 Commission Order Number 1441 gave notice to
16 the Postal Service's request, and granted a Postal
17 Service request to establish settlement procedures.
18 The Postal Service counsel was appointed to serve as
19 settlement coordinator.

20 I understand that a settlement conference
21 was held on August 10th. This morning the Postal
22 Service filed a report on the first settlement
23 conference, and proposed a procedural schedule. Mr.
24 Reiter, I very much appreciate the prompt submission
25 of a written report.

1 Nevertheless, for the benefit of those here
2 in the hearing room who have not had an opportunity to
3 read that report, would you please provide an oral
4 progress report of that settlement, or of the
5 settlement negotiations.

6 MR. REITER: Yes, Mr. Chairman. We had very
7 good representation at the conference. There were
8 representatives for all but two of the parties who
9 have intervened.

10 Based on the discussions, I don't think that
11 we will be able to have a complete settlement of this
12 case. Nevertheless, the discussions were very
13 productive, and I think that as discovery proceeds,
14 and the parties get a better understanding of what
15 they need to know about our presentation, we will
16 probably be able to specify the factual issues that
17 need further inquiry, and we have reflected that also
18 in the proposed schedule.

19 And it may be possible that there are some
20 issues that all parties agree on, and we can specify
21 those as well, and we won't need to pursue those in
22 the hearings.

23 We also proposed that a further settlement
24 conference be scheduled so that we will have an
25 opportunity to discuss those issues, and then the

1 Postal Service will present a report on that to the
2 Commission.

3 CHAIRMAN OMAS: Thank you. Does any
4 participant wish to supplement Mr. Reiter's comments?

5 (No response.)

6 CHAIRMAN OMAS: Mr. Reiter, the written
7 report proposed that a second settlement conference
8 report would not be submitted until October 7th. I
9 gather that this date was chosen for the convenience
10 of the participants, and to accommodate activity and
11 depending on them as rate cases; is that correct?

12 MR. REITER: Yes, and in fact, several of
13 the dates were chosen primarily to accommodate the
14 demands on all of the parties during this stage of the
15 rate case.

16 And I will note that the report of the
17 second conference on October 7th, as you note, is a
18 day after the actual conference on October 6th. I
19 realize that is a big stretch from the end of
20 discovery, but the reason for that is the final stages
21 of the rate case.

22 Also, I want to propose a change to my
23 proposal based on some further comments that I got
24 from other counsel. Hearings for cross-examination of
25 the Postal Service's case, I would like to suggest

1 that those be shifted to October 17th. I propose the
2 19th, and the 18th, if necessary.

3 That will give parties a little bit more
4 time to prepare their own cases, which I have down for
5 October 24th.

6 CHAIRMAN OMAS: Thank you. Does any
7 participate object to that aspect of the procedural
8 schedule suggested by the Postal Service?

9 (No response.)

10 CHAIRMAN OMAS: The report on the first
11 settlement conference indicates that a settlement of
12 all issues is unlikely. Commission Order Number 1441
13 directed the participants to be prepared to identify
14 issues that would indicate the need to schedule a
15 hearing. What issues seem most likely to require
16 evidentiary hearings at this time?

17 MR. REITER: Issues were raised at the
18 conference -- I had a list, but I am sure I remember,
19 and counsel will help me if I forget. But issues were
20 raised concerning the before rates forecast. Help me
21 out. You all raised them.

22 CHAIRMAN OMAS: Mr. Volner.

23 MR. VOLNER: Let me see if I can sort of
24 reconstruct it. There were a number of issues raised,
25 and some of them are not of a factual nature, and Mr.

1 Baker can speak to that.

2 MR. REITER: Right.

3 MR. VOLNER: There are others that are
4 factual in nature, including the before rates forecast
5 volume, and the after NSA forecast really more than
6 the before rates forecast volume.

7 And there were questions raised concerning
8 some of the terms and provisions of the NSA agreement
9 itself, as to the extent to which it permitted
10 Bookspan to do things that some parties considered
11 undesirable, and there were some differences of
12 opinion as to whether it did or did not, and that is a
13 matter that we will address in the course of the
14 hearing.

15 A further issue that was raised was the
16 question of the multiplier effect and its
17 quantification. And then there was an issue
18 concerning -- and which is in part factual and in part
19 legal in nature, concerning the question of Bookspan's
20 use of certain standard mail rate categories for not
21 the shipment of the mail that is the subject to the
22 NSA, but for the -- to send as they are required to do
23 by law the periodic notices to consumers that their
24 main selections, unless they opt out, will be sent to
25 them.

1 If I can speak to some of the empirical
2 questions, we intend as discovery moves forward and in
3 some cases even before discovery moves forward, as the
4 session yesterday was very helpful to us in
5 understanding the specifics of the issues.

6 We intend to supply some additional
7 information that is not in the testimony, and that we
8 will need to supply under seal because it is
9 competitively sensitive.

10 And as soon as we can get that done, and
11 hopefully within the next week to 10 days frankly, we
12 will do so. We will probably do it in the form of a
13 library reference because that makes things a little
14 bit easier.

15 CHAIRMAN OMAS: Thank you, Mr. Volner. Mr.
16 Baker.

17 MR. BAKER: This is William Baker on behalf
18 of the Newspaper Association of America. There are
19 several issues of interest to us in this case. First
20 and foremost, as Mr. Volner alluded to, this case
21 proposes a discount that does not justify any cost
22 savings.

23 The Commission before has never approved
24 such a discount, and we think that raises some
25 profound legal and policy questions that need to be

1 addressed by the Commission.

2 Secondly, there are aspects of this that
3 concern us simply because of the discriminatory nature
4 of this discount available to the one mailer,
5 Bookspan.

6 We have some questions that we intend to
7 explore in discovery, and which may or may not require
8 a hearing as we get to it to quantify the financial
9 benefit that the Postal Service anticipates from this
10 from the conversion of flat mail to letter mail.

11 We have some concerns about the rate
12 structure and the Postal Service's quantification of
13 assumed benefits that they present in their direct
14 case, and there may be some related issues arising out
15 of that. That is the general nature of our concerns
16 at the moment, Mr. Chairman.

17 CHAIRMAN OMAS: Thank you, Mr. Baker. Yes,
18 Mr. Anderson?

19 MR. ANDERSON: Darryl Anderson for the
20 American Postal Workers Union. Thank you, Mr.
21 Chairman. The American Postal Workers Union will
22 question and probably challenge the accuracy and
23 sufficiency of the cost data submitted in this case
24 for the purpose of evaluating the financial impact on
25 the Postal Service.

1 The data that they submitted here is in
2 large part data that was submitted in our 2005-1, but
3 the problems -- and there are problems with the data
4 which the Postal Service has acknowledged in our
5 2005-1. They acknowledged that on cross-examination.

6 But unfortunately those problems have not
7 been resolved because in our 2005-1, they are not
8 relying on that data as a basis for the rates. So now
9 they have submitted the same data here with those
10 unresolved problems, and we are going to look into
11 that in discovery and possibly challenge its
12 sufficiency.

13 CHAIRMAN OMAS: Thank you. That was Mr.
14 Anderson with the AFL-CIO; American Postal Workers
15 Union/AFL-CIO.

16 MR. ANDERSON: Thank you.

17 CHAIRMAN OMAS: Is there anyone else who
18 wishes to comment? Mr. Costich.

19 MR. COSTICH: Thank you, Mr. Chairman. I
20 think counsel for Bookspan has covered most of the
21 issues that came up yesterday, but perhaps I can
22 elaborate a little bit concerning the multiplier
23 effect.

24 There doesn't seem to be any definition of
25 how one measures that, or even if it refers to

1 volumes, or whether it refers to contribution. The
2 OCA also has some concern with why this case is an
3 NSA, as opposed to a more general classification. The
4 Postal Service addressed that in its request in a
5 couple of sentences, but they seem to be mostly
6 conclusionary.

7 There is -- I am not sure how to describe
8 the problem other than there is one provision in the
9 proposed DNCS language relating to Bookspan acquiring
10 controlling interest in some entities, and whether
11 that should trigger an adjustment of thresholds, but I
12 think that would be taken care of.

13 And finally the data collection plan looks a
14 little thin, and OCA may have some suggestions for
15 additions there.

16 CHAIRMAN OMAS: Thank you, mr. Costich. Mr.
17 Olson.

18 MR. OLSON: Mr. Chairman, William Olson. In
19 addition to the matters discussed and described
20 before, the letter flat differential and unit
21 contribution is a matter of some interest to us.

22 The reliability of the Postal Service
23 estimates that go to making up, I think, the majority
24 of the revenue enhancements that they anticipate from
25 this NSA, as well as what Mr. Costich described as a

1 fix of a system-wide or sub-class wide problem in rate
2 design through an NSA offer to one mailer, and
3 implications of that. And of course the precedential
4 effect of this NSA for future NSAs. Thank you.

5 CHAIRMAN OMAS: Thank you, Mr. Olson. Is
6 there anyone else?

7 (No response.)

8 CHAIRMAN OMAS: The next order of business
9 is discovery. Discovery is already available to
10 intervenors and some discovery has already been filed.
11 I would like the participants to comment at this time
12 on the need for additional discovery. Mr. Volner,
13 would you like to begin?

14 MR. VOLNER: Mr. Chairman, we discussed the
15 schedule, and the schedule, I think -- and certainly
16 among the intervenors who were at the settlement
17 conference, and that Mr. Reiter circulated -- he
18 circulated a draft earlier, was designed to do two
19 things.

20 First, to allow additional time for those
21 parties who have empirical questions to pursue
22 additional discovery, and second, to try to work this
23 in so that we didn't, and as Mr. Reiter said, didn't
24 put insuperable burdens on those of us who also have
25 rate case responsibilities.

1 And so what has been proposed -- and I think
2 it essentially addresses the OCA's request -- is that
3 the completion of discovery would -- that discovery
4 would continue for another month, effectively until
5 September 7th.

6 And as far as Bookspan is concerned that is
7 perfectly fine. I should point out that Mr. Reiter's
8 proposed schedule contemplates a motion to limit
9 issues, and I will tell you now so that there is no
10 surprise about this, that some of the legal issues
11 that have been articulated are very likely to be the
12 subject of a motion on our part, because if these
13 issues are really disabling, we need to know before we
14 start going into the rest of the hearing process.

15 So that in fairness to the parties who have
16 raised these issues, I just wanted to let you know
17 what Bookspan's position is.

18 CHAIRMAN OMAS: All right. Thank you, Mr.
19 Volner. Mr. Baker.

20 MR. BAKER: I was merely going to add, Mr.
21 Chairman, that the proposed discovery schedule that
22 was submitted this morning by Mr. Reiter appears
23 satisfactory to us and would be adequate. Thank you.

24 CHAIRMAN OMAS: Thank you, Mr. Baker. Mr.
25 Anderson, any comments?

1 MR. ANDERSON: No, thank you, Mr. Chairman.

2 CHAIRMAN OMAS: Mr. Olson.

3 MR. OLSON: No, sir.

4 CHAIRMAN OMAS: Anyone else?

5 (No response.)

6 CHAIRMAN OMAS: A factor in developing the
7 procedural schedule is whether any participate will
8 want to present testimony in opposition to this
9 request.

10 I recognize that it may be too early in the
11 case to know whether testimony in opposition will be
12 offered, but it can't hurt to ask. Does any
13 participate currently plan to submit testimony in
14 opposition to the pending request at this time? We
15 won't hold you to it. Mr. Costich.

16 MR. COSTICH: Thank you, Mr. Chairman. At
17 this time the OCA certainly contemplates filing
18 rebuttal testimony.

19 CHAIRMAN OMAS: Thank you. Does any
20 participate have any other matter to raise in today's
21 prehearing conference?

22 (No response.)

23 CHAIRMAN OMAS: Does any of my fellow
24 Commissioners have any comments? Mr. Tisdale.

25 COMMISSIONER TISDALE: Nothing, Mr.

1 Chairman.

2 CHAIRMAN OMAS: Mr. Hammond.

3 COMMISSIONER HAMMOND: No, nothing.

4 CHAIRMAN OMAS: There being none, I would
5 like to thank you all. I will take these responses
6 under consideration and will issue a procedural ruling
7 in the near future. This prehearing conference is
8 adjourned. Thank you.

9 (Whereupon, at 10:21 a.m. the hearing in the
10 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: MC2005-3
CASE TITLE: Rate and Service Changes to Implement
Baseline Negotiated Service Agreement
With Bookspan
HEARING DATE: August 11, 2005
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Postal Rate Commission.

Date: August 11, 2005



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